



The Town of Hilton Head Island Regular Town Council Meeting

Tuesday, February 7, 2012

4:00 P.M.

AGENDA

**As a Courtesy to Others Please Turn Off All Cell Phones and Pagers During
the Town Council Meeting**

- 1) Call to Order**
- 2) Pledge to the Flag**
- 3) Invocation**
- 4) FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) Proclamations and Commendations**
- 6) Approval of Minutes**
 - a. Town Council Meeting – January 17, 2012
- 7) Report of the Town Manager**
 - a. Semi-Annual Report of the Parks and Recreation Commission – B. Marc Stuckart, Chairman\
 - b. FY2011 CAFR and Audit Presentation – Tom McNeish, Shareholder, Elliott Davis, LLC
 - c. FY2012 Financial Statements
 - d. Town Manager’s Items of Interest
- 8) Reports from Members of Council**
 - a. General Reports from Council
 - b. Report of the Intergovernmental Relations Committee – George Williams, Chairman
 - i. Proposed Legislative Letters
 - c. Report of the Personnel Committee – Lee Edwards, Chairman
 - d. Report of the Planning & Development Standards Committee –Bill Ferguson, Chairman
 - e. Report of the Public Facilities Committee – Kim Likins, Chairman
 - f. Report of the Public Safety Committee – Bill Harkins, Chairman
 - g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

9) Appearance by Citizens

10) Unfinished Business

None.

11) New Business

a. Consideration of a Resolution authorizing Town of Hilton Head Island/Sea Pines Master Drainage Agreement

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of that certain drainage agreement and access, drainage and maintenance easement with Community Services Associates, Inc. across property located in Sea Pines Plantation.

b. Consideration of a Resolution authorizing Town of Hilton Head Island/Wexford Master Drainage Agreement

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of that certain drainage agreement and access, drainage and maintenance easement with Wexford Plantation Homeowners Association, Inc. across property located in Wexford Plantation.

c. Consideration of a Resolution supporting the MASC Legislative Agenda

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, expressing its support for the Municipal Association of South Carolina's 2012 Legislative Agenda.

12) Executive Session

a. Land Acquisition

13) Adjournment

THE TOWN OF HILTON HEAD ISLAND
REGULAR TOWN COUNCIL MEETING

Date: Tuesday, January 17, 2012

Time: 4:00 P.M.

Present from Town Council: Drew A. Laughlin, *Mayor*; Ken Heitzke, *Mayor-Pro Tem*; George Williams, Lee Edwards, Bill Ferguson, Bill Harkins, Kim Likins, *Council Members*.

Present from Town Staff: Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Scott Liggett, *Director of Public Projects and Facilities/Chief Engineer*; Shawn Colin, *Comprehensive Planning Manager*; Teri Lewis, *LMO Official*; Heather Colin, *Development Review Administrator*; Nancy Gasen, *Director of Human Resources*; Susan Simmons, *Director of Finance*; Jill Foster, *Deputy Director of Community Development*; Brian Hulbert, *Staff Attorney*; Jeff Buckalew, *Town Engineer*; Heather Colin, *Development Review Administrator*; Nicole Dixon, *Senior Planner*; Jayme Lopko, *Senior Planner*; Vicki Pfannenschmidt, *Executive Assistant*

Present from Media: Tom Barton, *Island Packet*

1) CALL TO ORDER

Mayor Laughlin called the meeting to order at 4:00 p.m.

2) PLEDGE TO THE FLAG

3) INVOCATION

4) FOIA COMPLIANCE – Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5) Proclamations and Commendations

a. First Baptist Church of Hilton Head Island, SC 50th Anniversary

Dr. John Keller was present to accept the proclamation.

6) Approval of Minutes

a. Town Council Meeting – December 20, 2011

Mr. Heitzke moved to approve. Mr. Harkins seconded. Mr. Edwards noted an error in the vote for Item 11.c. **New Business**. He stated that he voted in opposition to the motion and asked that the minutes be corrected to reflect that. All Council members agreed with Mr. Edwards concerning the vote tally. The corrected minutes from the December 20, 2012 Town Council meeting were approved by a vote of 7-0.

7) Report of the Town Manager

a. Semi-Annual Report of the Design Review Board – Todd Theodore, Chairman

Chairman Theodore presented an activity report for the final six months of 2011.

b. Semi-Annual Report of the Board of Zoning Appeals - Roger A. DeCaigny, Chairman

Chairman Rodger DeCaigny presented an activity report for the final six months of 2011.

c. Town Manager's Items of Interest

Steve Riley asked Scott Liggett to come forward to give an update on the Beach Renourishment Project. Mr. Liggett approached the dais and explained the progress to date and an updated timeline.

Mr. Riley reported on some Items of Interest.

d. 2011 Town Council Targets and Goals – year end update

Mr. Riley noted the year end update was included in the packet and he would be happy to answer any questions at that time or a future date.

8) Reports from Members of Council

a. General Reports from Council

Mr. Williams inquired as to the availability of the Accommodations Tax Advisory Committee report to Town Council concerning the Committee recommendations for awarding grants. Mr. Riley said the Town had not yet received a report.

Mrs. Likins suggested Town Council consider revisiting the proposed Appearance Standard Ordinance which was defeated in December of 2011. She stated she is continuing to have some issues being brought to her attention concerning buildings in the South Forest Beach area. Mayor Laughlin stated that if there is sufficient interest by Town Council he would be happy to bring it back for discussion.

b. Report of the Intergovernmental Relations Committee – George Williams, Chairman

Mr. Williams stated the Committee met earlier in the afternoon and focused on reviewing Bills for this legislative session. He said they voted to make recommendations on a number of bills and that will be coming forward to Town Council at the February 7, 2012 Town Council Meeting.

Mr. Williams reported the Committee discussed and agreed to change the starting time of the meetings from 2:30 p.m. to 3:00 p.m. on all remaining scheduled meeting dates.

c. Report of the Personnel Committee – Lee Edwards, Chairman

Mr. Edwards informed Council that the Committee met earlier in the afternoon and conducted an interview for the vacancy on the Planning Commission. He stated they also discussed candidates for the Airport Advisory Board.

d. Report of the Planning & Development Standards Committee –Bill Ferguson, Chairman

Mr. Ferguson stated the meeting scheduled for Wednesday, January 25, 2011 was cancelled due to a lack of agenda items.

e. Report of the Public Facilities Committee – Kim Likins, Chairman

Mrs. Likins said the Committee met earlier in the month and two items under new business were results of the meeting.

f. Report of the Public Safety Committee – Bill Harkins, Chairman

Mr. Harkins reported the Committee met last week and reviewed the Beaufort County Towing Ordinance. He explained staff provided information to consider for additions or deletions. Mr. Harkins said staff is following up with an interview process with towing companies that wish to participate so they can share their thoughts on the proposed

ordinance. He said there would also be an interview process with representatives from the PUD's. He explained once all the information is obtained, the Committee will meet again and hopefully craft together a suggestion for Town Council review.

g. Report of the LMO Rewrite Committee – Kim Likins, Ex-Officio Member

Mrs. Likins informed Council the LMO Rewrite Consultant Selection Sub-Committee has selected Clarion Associates as the consultant for assistance on the LMO Rewrite. She added the Committee will be meeting on January 31, 2012 and will meet the consultants at that time.

9) Appearance by Citizens

Pamela Martin Ovens addressed Town Council concerning signage for the Farmers Market held at Honey Horn.

Thomas C. Barnwell, Jr. addressed Town Council concerning the status of the Mitchelville Preservation project.

10) Unfinished Business

None.

11) New Business

a. Consideration of a Resolution for agreement with Community Foundation of the Lowcountry

Consideration of a Resolution that the Town Council of the Town of Hilton Head Island authorizes the Mayor to execute and deliver a gift agreement with the Community Foundation of the Lowcountry (CFL) for the acquisition of the "Family" sculpture.

Mr. Heitzke moved to approve. Mr. Williams seconded. On behalf of the Community Foundation of the Lowcountry, Mr. Mark Baker thanked Town Council for their participation and explained the process for placing the art. He noted the Committee is working on planning another event in 2013. The motion was approved by a vote of 7-0.

b. Consideration of a Recommendation for conveyance of a right of way to Sandra C. Simmons

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island endorse the conveyance of a 0.027 acre portion of right of way (0.014 acres of which will be restricted with a sight triangle easement) to Sandra C. Simmons for the potential development of a future roadway.

Mr. Heitzke moved to approve. Mr. Williams seconded. The motion was approved by a vote of 7-0.

c. Consideration of a Recommendation for additional funding for Tax Increment Financing (TIF) Area Sewer Projects

Consideration of a Recommendation that the Town Council of the Town of Hilton Head Island endorse the request made by the Hilton Head Public Service District and that Town Council provide an additional \$160,000 of Tax Increment Financing (TIF) funds in order to complete the referenced projects.

Mr. Heitzke moved to approve. Mr. Ferguson seconded. The motion was approved by a vote of 7-0.

12) Executive Session

Mr. Riley stated he needed an executive session for contractual matters pertaining to land acquisition including requests to acquire town owned land through trade or purchase; contractual matters pertaining to possible land swap with the Mall at Shelter Cove; contractual matters pertaining to stormwater utility agreements with Sea Pines and Wexford PUD's; contractual matters pertaining to renewal of the law enforcement services agreement with Beaufort County and the Beaufort County Sheriff's Office; and personnel matters pertaining to appointments to boards and commissions.

At 4:34 p.m. Mr. Heitzke moved to go into Executive Session for the reasons stated by the Town Manager. Mr. Harkins seconded. The motion was approved by a vote of 7-0.

Mayor Laughlin called the meeting back to order at 6:12 p.m. and asked if there was any business to take up as a result of executive session.

Mr. Heitzke moved that the Mayor and the Town Manager be authorized to execute and deliver the contract for the purchase of approximately 1.79 acres on Beach City Road on Hilton Head Island from 217 Beach City Road, LLC, and that the Mayor and the Town Manager be authorized to take such other and further actions as may be necessary to close the transaction described in the contract. Mr. Williams seconded. The motion was approved by a vote of 7-0.

Mr. Heitze moved to approve the renewal of the Town of Hilton Head Island, Beaufort County, and Beaufort County Sheriff's Office Law Enforcement Services Agreement from January 17, 2012 to January 17, 2015. Mrs. Likins seconded. The motion was approved by a vote of 7-0.

13) Adjournment

Mr. Williams moved to adjourn. Mr. Heitzke seconded. The motion was approved by a vote of 7-0. The meeting was adjourned at 6:13 p.m.

Vicki Pfannenschmidt
Executive Assistant

Approved:

Drew A. Laughlin, Mayor



Items of Interest

February 7, 2012

1. Noteworthy Events

- a) Some of the upcoming meetings at Town Hall:
- Parks and Recreation Commission – February 9, 3:30 p.m.
 - Design Review Board – February 14, 1:15 p.m.
 - Intergovernmental Relations Committee – February 21, 3:00 p.m.
 - Town Council – February 21, 4:00 p.m.

(Meetings subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at www.hiltonheadislandsc.gov for meeting agendas)

2012 Hilton Head Island Events

February 11, 2012 8:00am-11:00am	Half Marathon 10K & 5K	Jarvis Creek Park
February 11, 2012 12:00pm-3:00pm	Taste of Gullah	Arts Center of Coastal Carolina
February 18-19, 2012 11:00am-6:00pm	Hilton Head Island Gullah Celebration	Honey Horn

February 7, 2012

The Honorable W. Brian White, Chairman
House Ways and Means Committee
S.C. House of Representatives
525 Blatt Building
Columbia, SC 29201

Re: H. 4337/Travel Agent Tax Fairness Act

Dear Representative White:

The Hilton Head Island Town Council understands that H. 4337 has been filed and is before the House Ways & Means Committee. The bill exempts travel agents and online travel companies from paying taxes on hotel occupancy. As you may be aware, the Town of Hilton Head Island and many other South Carolina municipalities agreed to settle a dispute with several online companies. We were able to recover \$562,500 for taxpayers from the settlement. The revenue from accommodations taxes is used, generally speaking, for tourism-related expenses such as fire, rescue and law enforcement services. Additionally, the South Carolina Supreme Court, one year ago, decided against the assertion of the online travel agencies with regard to the rate they paid to a hotel.

The Town Council opposes language within H. 4337 that exempts online travel agencies from paying accommodations taxes due the Town. We encourage you to oppose any language that creates exemptions for online travel companies and recognize the fairness of the accommodations tax and a recent South Carolina Supreme Court decision supporting our position.

Sincerely,

Drew A. Laughlin, Mayor

CC: Town Council
Stephen G. Riley, C.M., Town Manager
Gregory D. DeLoach, Esq., Assistant Town Manager
Susan Simmons, Director of Finance
House Ways and Means Committee Members
Beaufort County Legislative Delegation Members
Reba Campbell, Deputy Executive Director, MASC
Warren Harley, Government Affairs Liaison, MASC
Ed Schafer, Legislative Counsel, MASC
Jerry Stewart, Chairman, Beaufort County Legislative Affairs Committee

February 7, 2012

The Honorable Hugh K. Leatherman, Sr., Chairman
Senate Finance Committee
S.C. Senate
111 Gressette Building
Columbia, SC 29202

Re: S. 1002/Financing of Redevelopment Projects

Dear Senator Leatherman:

The Hilton Head Island Town Council understands that S. 1002 is before the Senate Finance Committee. The Town created its Tax Increment Financing (TIF) in 1999. As you know, the bill would, in part, restrict the application of TIF proceeds for the payment of principal and interest on the obligations sold for projects specified and budgeted in the municipal ordinance or redevelopment project costs for projects only specified and budgeted in the municipal ordinance. Additionally, the bill would categorize remaining monies as surplus funds. These so-called surplus funds could only pay down debt obligations or must be distributed annually to the taxing districts in the redevelopment area.

The Town is aware of efforts underway that seek to clarify that the proposed legislation would only apply to future TIF'S. Subsequent legislative action should not impair the legitimacy of previous acts. At this point, the Town supports clarifying language that makes clear it and other municipalities are not subject to S. 1002.

Finally, in the event the Town decides to adopt new TIFs, we oppose the restrictions found within S. 1002 that would limit the flexibility necessary for a successful TIF. It is impractical and unreasonable to require municipalities, at the point of TIF creation, to specify all projects and costs within a TIF area given the number of years generally associated with TIF districts.

Thank you for your consideration.

Sincerely,

Drew A. Laughlin, Mayor

CC: Town Council
Stephen G. Riley, C.M., Town Manager
Gregory D. DeLoach, Esq., Assistant Town Manager
Susan Simmons, Director of Finance
Senate Finance Committee Members
Beaufort County Legislative Delegation Members
Reba Campbell, Deputy Executive Director, MASC
Warren Harley, Government Affairs Liaison, MASC
Ed Schafer, Legislative Counsel, MASC
Jerry Stewart, Chairman, Beaufort County Legislative Affairs Committee



MEMORANDUM

TO: Town Council

VIA: Stephen G. Riley, CM, Town Manager

FROM: Jeff Buckalew, PE, Town Engineer

COPY: Scott Liggett, PE, Director of Public Projects and Facilities / Chief Engineer
Gregg Alford, Town Attorney

DATE: January 25, 2012

SUBJECT: Proposed Storm Water Agreement with Community Services Associates, Inc. (Sea Pines Plantation)

Recommendation:

Staff recommends that the Town enter into an agreement with Community Services Associates, Inc., Inc. ("CSA") to undertake the maintenance and improvement of the storm and surface water drainage system within Sea Pines Plantation and acquire non-exclusive easement rights for access, maintenance, and drainage over the Sea Pines Plantation drainage system.

Summary:

CSA has agreed to grant the Town maintenance rights over their drainage system. The Town will use storm water utility fee revenues to provide maintenance and improvements on this system in accordance with the agreement. The Town's responsibilities shall begin on July 1, 2012. This 4,036 acre development will be a significant addition to the Town's storm water responsibilities. Given the rate increase of 2010 and the bond acquisition to occur this year, staff does not recommend a rate increase at this time to fund this

additional responsibility. However, given current staffing levels, the level of service may likely be diminished.

Background:

Shortly after the creation of the Storm Water Utility in 2001, the Town offered to accept the maintenance responsibility of the storm water systems located within the planned unit developments. To date, agreements have been executed with Shipyard, Port Royal, Hilton Head Plantation, Indigo Run, Leamington, and Palmetto Dunes. CSA approached the Town earlier this year requesting the Town accept maintenance of their drainage system. The agreement defines the roles and responsibilities of each party and the exhibit delineates the physical limits of the Town's responsibilities.

The current annual storm water fee is \$108.70 per single family unit (SFU). Past maintenance of the PUD storm water systems the Town is currently responsible for has cost approximately \$85 per acre per year. Given the number of single family units paying the fee within the Town limits and this estimated rate of expenditure, it would take a fee increase of \$10.39 per SFU to cover this additional area. Staff shall closely monitor the maintenance costs and our service capabilities to determine whether a fee increase or staffing adjustments are warranted for fiscal year 2014.

Attachments:

- CSA Drainage Agreement
- CSA Access, Drainage and Maintenance Agreement
- Sea Pines Drainage Easement Exhibit (area of responsibility)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH COMMUNITY SERVICES ASSOCIATES, INC. ACROSS PROPERTY LOCATED IN SEA PINES PLANTATION.

WHEREAS, Community Services Associates, Inc. (“CSA”) owns improved and unimproved real property and easements within Sea Pines Plantation; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, CSA desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Sea Pines Plantation to facilitate the flow of storm water drainage through and from areas within Sea Pines Plantation; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from CSA a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibits “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that which is attached hereto as Exhibits "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNSEL THIS ___ DAY OF
_____, 2012.**

Drew Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

STATE OF SOUTH CAROLINA)
) **DRAINAGE AGREEMENT**
COUNTY OF BEAUFORT)

This Drainage Agreement is made this _____ day of _____, 2012, by and between Community Services Associates, Inc. having an address of 175 Greenwood Drive, Hilton Head Island, SC 29928; and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Sea Pines Plantation is a planned unit development lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, Community Services Associates, Inc. is the owner of improved and unimproved real property and easements within Sea Pines Plantation; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Service Fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina, are returned to the Town of Hilton Head Island, South Carolina, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*; and,

WHEREAS, the imposition and collection of Storm Water Service Fees provides a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Community Services Associates, Inc. desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Sea Pines Plantation as further described below to facilitate the flow of storm water drainage through Sea Pines Plantation and from areas within Sea Pines Plantation; and,

WHEREAS, Community Services Associates, Inc. has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance and improvement of the storm and surface water drainage system within certain areas of Sea Pines Plantation.

NOW, THEREFORE, know all men by these presents, Community Services Associates, Inc. and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:
 - (a) *Agreement:* This “Drainage Agreement”.
 - (b) *Association:* Community Services Associates, Inc., a South Carolina not for profit corporation
 - (c) *Casualty:* The destruction of all or any part of the Drainage System through a natural or other disaster.
 - (d) *Covenants:* The declaration of covenants and restrictions recorded in the Beaufort County Register of Deeds Office in Official Record Book 519 at Page 1161, as amended.
 - (e) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities, weirs, manholes, valves, gates and related equipment, and any and all related storm water improvements lying in Sea Pines Plantation within the limits of the easement areas as depicted on the map attached hereto as Exhibit “A”, and by this reference made a part hereof, which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within Sea Pines Plantation.
 - (f) *Drainage System Deficiency:* A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, any areas which require improvements to

facilitate the adequate flow of storm and surface water through the Drainage System, any soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the introduction of pollution or pollutants into the Drainage System from any source.

(g) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents or impedes the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Sea Pines Plantation.

(h) *Sea Pines Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit "A" hereto, and by this reference made a part hereof.

(i) *Storm Water Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of and as defined in

Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

(j) *Storm Water Project Prioritization and Annual Budget Process:* The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town limits that qualify for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water budget which defines all revenues and expenditures associated with the Storm Water Fees. This budget shall include those known projects intended to be completed within that fiscal year.

(k) *Town:* The Town of Hilton Head Island, South Carolina.

2. **Grant of Easements:** Simultaneous with the execution and delivery of this Agreement, the Association shall grant an “Access, Drainage and Maintenance Easement” to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Sea Pines Plantation, with said

easement being in the form attached hereto as Exhibit “B”, and made a part hereof.

3. **Upkeep and Maintenance of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement and the Access, Drainage and Maintenance Easement.

4. **Procedure for Town’s Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below, the Parties agree to the following procedure for the Town’s improvement, repair and maintenance of the Drainage System:

(a) *Identifying Drainage System Deficiencies:* The Association shall identify any Drainage System Deficiencies.

(b) *Schedule for Submission:* The Association shall submit its written description of all known or perceived Drainage System Deficiencies to the Town Storm Water Administrator, describing

the nature, location and cause, if known, of each Drainage System Deficiency. To the extent available, the Association shall also provide potential solutions and preliminary cost estimates for each such Drainage System Deficiency. Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town, by the end of any calendar year will be considered in the development of the Storm Water Project Prioritization and Annual Budget Process for the following fiscal year.

(c) *Completion of Maintenance:* The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:

(i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same;

(ii) The Town shall determine the priority of the correction of the Drainage System Deficiencies and schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the

correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:

(A) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year; and

(B) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees; and

(iii) The Town shall complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual Budget Process, unless emergency projects or repairs alter the prioritization such that funds are insufficient to correct all drainage system deficiencies as intended within the same fiscal year.

(d) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder in advance of the commencement of such work.

(e) The Association shall be solely responsible for the notification of Sea Pines Plantation property owners or guests

regarding any Town maintenance or emergency work that may disrupt their normal activities.

(f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Sea Pines Plantation and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Drainage System Deficiency shall be final.

5. Further Obligations of the Association:

The Association agrees that during the Term, as hereinafter defined, or any renewal term of this Agreement, it shall take no action which obstructs or impedes the flow of storm and surface water through the Drainage System; provided, however, that to the extent that the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, roads, pathways, utilities, etc.), this

Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Stormwater Service Fees budgeted for by the Town in any given fiscal year. The Town and the Association intend the obligation of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

(a) *Responsibilities of the Association:* The Association shall take such steps as may be reasonably necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency.

(b) *Town Responsibilities:* Upon receipt of notification of an Emergency from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct

or repair the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

(a) *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

(b) *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.

(c) *Approval of Plans:* The engineering and design plans must be approved in writing by the Association, prior to any reconstruction of the Drainage System. Reconstruction may require work outside of the easement limits as depicted in Exhibit "A";

(d) *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association, the Town shall complete the reconstruction of the

Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

9. **Maintenance of Drainage System by the Association:** Nothing herein shall prohibit the Association from performing any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Project Prioritization and Annual Budget Process, in the event that the Association determines that it is in its interest to do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the Association shall be entitled to reimbursement for any such work from Stormwater Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

(a) The Association shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency.

(b) Unless the Town determines that:

- (i) The proposed improvement, repair or maintenance does not correct the existing Drainage System Deficiency; or,
 - (ii) The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct an existing Drainage System Deficiency, the Town, through authorized staff, shall grant its written approval.
- (c) The Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be amended from time to time, only upon receipt of the Town's written approval.
- (d) Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work.
- (e) The Association shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work where the Town may need to inspect the work.
- (f) Upon completion of the work, as approved by the Town, the Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be accompanied by any required test reports, construction data /

measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.

(g) The Town shall thereafter budget funds for the payment of the reimbursement to the Association from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town's multi-year Capital Improvements Program.

10. **Emergency Work by the Association:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:

(a) The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.

(b) The Association or its agents or contractors shall complete the work that is necessary to repair or correct the damage caused by the Emergency.

(c) Upon completion of the work, the Association shall submit its request for payment to the Town, which shall detail the work performed and the cost for the same, and be accompanied by any required test reports, construction data / measurements or as-built

surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.

(d) Within three (3) fiscal years following the completion of the work by the Association necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Association, and shall pay the same in accordance with the approved budget.

11. **Lawton Canal and Lawton Canal Outfall Facility:** On November 16, 1992, the Association and the Town entered into an agreement regarding the "Lawton Canal" and the "Lawton Canal Outfall Facility" as described therein (the "Lawton Canal Agreement"). In April, 1999, and again on September 3, 2002, the Lawton Canal Agreement was amended, with respect to the rights and obligations of the Association and the Town. This Agreement shall supersede all aspects of the Lawton Canal Agreement and all amendments thereto, and the same shall be deemed terminated, null and void upon the date of the complete execution and acceptance of this Agreement. The "Lawton Canal Outfall Facility" (ie. the pump station and related infrastructure) shall continue to be maintained by the Association in good operating condition consistent with the original design objectives, and the "Lawton Canal" shall be maintained pursuant to this Agreement and under the terms and provisions of the easement described in Article 2 herein. The Town acknowledges that the Association will continue

ownership of the Lawton Canal outfall facility and its ancillary equipment. The Association shall provide the Town with an itemized annual operations and maintenance budget and anticipated capital equipment costs for the Lawton Canal outfall facility by December 31st of each year. The budget shall be drafted following the procedures described in Article 9, and shall cover the period from July 1st through June 30th of the upcoming years. The Town shall include the submitted budget for the Lawton Canal outfall facility into its following fiscal year enterprise storm water utility budget which begins on July 1st. Upon Town Council approval of the budget, the Town shall then agree to pay one hundred percent (100%) of the actual cost of the fixed and variable operating and maintenance expenses and the actual cost of the anticipated capital equipment expenses of the Lawton Canal outfall facility annual budget. Any material increase in the fixed operating and maintenance expenses must first be approved, in writing, by the Town. The payments shall be made as follows: During the term of this agreement, and any renewals thereof, the Association shall annually provide to the Town prior to June 1st, a certified itemized statement of the actual costs of the fixed and variable operating and maintenance expenses, and capital equipment expenses for the twelve (12) months preceding the date of the certified statement. The Town shall pay the amounts described above yearly, and payment shall be due within thirty (30) days following receipt from the Association by the Town of the certified statement. Any labor provided by the

Association employees for operation and maintenance of the Lawton Canal Outfall Facility shall be billed at a flat rate of Twenty and no/100 (\$20.00) Dollars per hour, for each hour worked. From and after the date hereof, on the anniversary date hereof, the rate for labor shall be increased by a percentage equal to the percentage increase in the Consumer Price Index as published by the United States Department of Labor for the preceding twelve (12) months. All other fixed and variable operating expenses of the Lawton Canal Outfall Facility shall be billed at the actual cost of the same, without increase for the Association overhead or any other items. Past due accounts shall bear interest at the rate equal to the prevailing rate of interest the Town would pay to borrow funds. Any amounts payable hereunder shall be paid in arrears, and shall be due thirty (30) days following delivery of the annual certified statement showing the actual costs, but in no event shall any amount be due and payable unless and until the same has been considered and adopted as a part of the Town's annual budget. The Town shall be entitled to review all capital and maintenance accounts for verification and audit. This right shall be ongoing and exercised upon reasonable notice and during normal and customary business hours. The Association and the Town acknowledge and intend that the payments to be made hereunder constitute an obligation of the Town payable only from the Town Storm Water Service Fees or via a storm water utility municipal bond. The Association and the Town acknowledge and intend that the obligation of the Town to pay any money

due hereunder shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Town, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, money or credit of the Town.

12. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Sea Pines Plantation will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Sea Pines Plantation.

13. **Waiver of Stormwater Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges that it shall not be entitled to receive and hereby waives any Stormwater Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of Sea Pines Plantation, as indicated on the map attached hereto as Exhibit "A", for and during the Term or any renewal thereof.

14. **Term:** This Agreement shall remain in place for a period of five (5) years (the "Term"), and shall renew automatically for successive one (1) year

periods thereafter, (each such one (1) year period being a Renewal Term), unless any Party notifies the others, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of any Town fiscal year, which is June 30. Upon delivery of such notice, this Agreement shall terminate on July 1 of the calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

15. Representation and Warranties of the Association: The Association represents and warrants that:

- (a) As is shown by the Resolutions of the Board of Directors of the Association attached hereto as Exhibit "C", the Association represents that it has full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and Construction Easement to be delivered pursuant to this Agreement.
- (b) That it is not now a party to any litigation affecting the property burdened by the Access, Drainage and Maintenance and Construction Easement herein which could impair its obligations

under this Agreement or the Access, Drainage and Maintenance and Construction Easement, and it knows of no litigation or threatened litigation affecting its ability to grant the Access, Drainage and Maintenance and Construction Easement.

16. **Town Representation and Warranties:** The Town represents and warrants that:

(a) As is shown by the Resolution of the Town that is attached hereto as Exhibit "D", the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,

(b) That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

17. **Taxes:** The Association shall pay, prior to delinquency, all taxes on their respective properties within Sea Pines Plantation burdened by the easements granted under this Agreement. Should the Association fail to pay said taxes prior to delinquency, then the Town may pay said taxes and the Association shall reimburse the Town for such tax payment within fifteen (15) days of the Town's notification to the Association of its tax payment along with a copy of the Town's tax payment receipt.

18. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

19. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

20. **General Provisions:**

(a) *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

(b) *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Association.

(c) *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

(d) *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

(e) *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

(g) *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.

(h) *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successor and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

(i) *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town: The Town of Hilton Head Island,
South Carolina
Stephen G. Riley, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

To Community Services Associates, Inc.:
Cary S. Kelley
Executive Vice President, (*title*)
175 Greenwood Drive
Hilton Head Island, SC 29928

With Copy to: McNair Law Firm, P.A.
Walter J. Nester, III, Esquire
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

(j) *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

(k) *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the

Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina and the Association by and through their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 2012.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

Community Services Associates, Inc.:

By: _____

Attest: _____

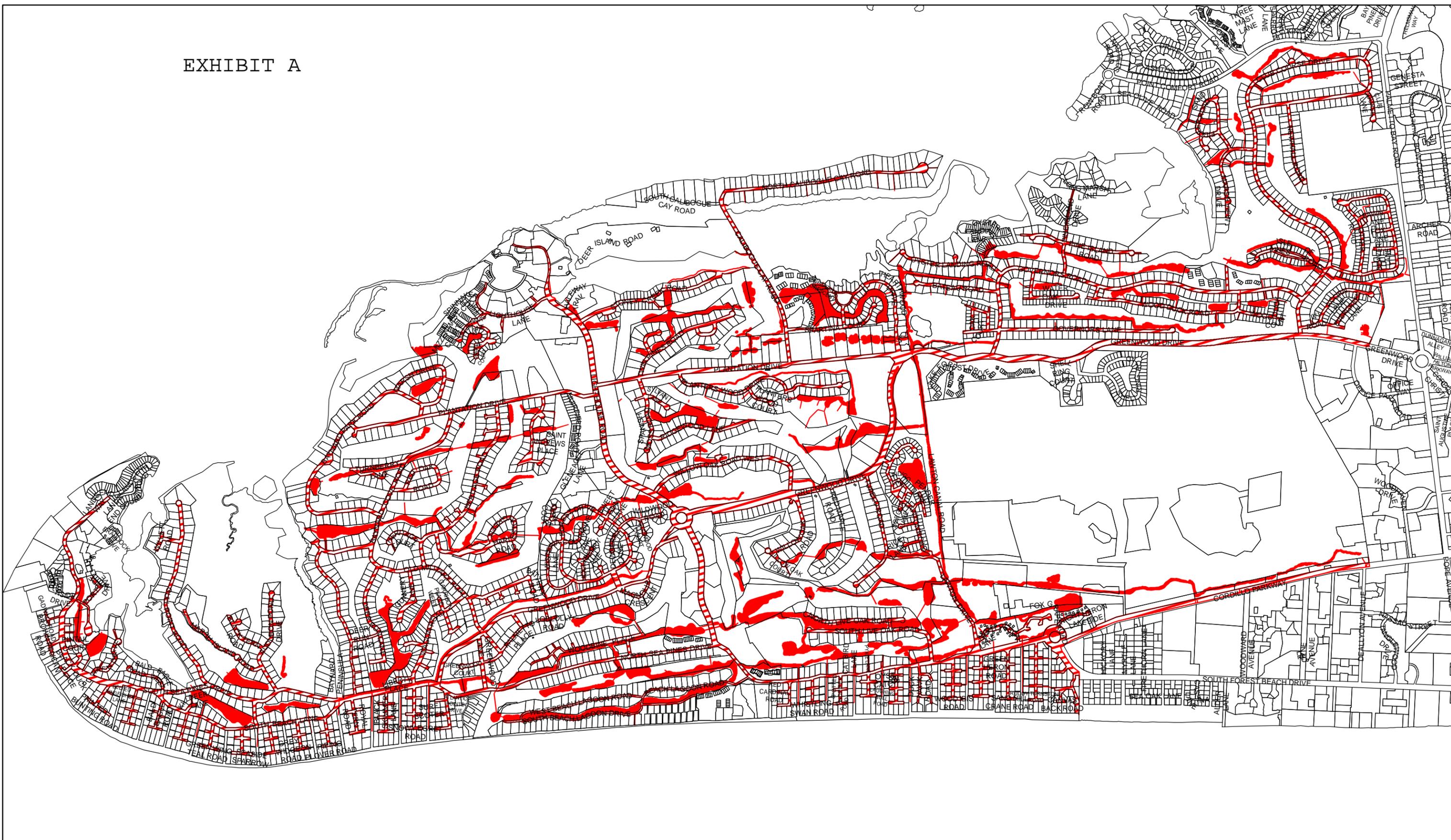
WITNESSES:

The Town Of Hilton Head Island,
South Carolina

By: _____
Drew A. Laughlin, Mayor

Attest: _____
Stephen G. Riley, Manager

EXHIBIT A



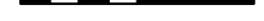
-  Parcels
-  Pipes and Lagoon Easement
-  Road RoW Drainage Easement

Note: Drainage easement widths are 20 feet from the center of pipes depicted on this exhibit and 15 feet from the top of bank of lagoons depicted on this exhibit.

Sea Pines Drainage Easement Exhibit



1,000 500 0 1,000 Feet



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

the map attached hereto as Exhibit "A", which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within Sea Pines Plantation.

(d) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Sea Pines Plantation.

(e) *Sea Pines Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit "A" hereto.

(f) *Permanent Structure*: Any vertical structure other than storm drainage or roadway infrastructure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.

(g) *Town*: The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements*: Community Services Associates, Inc. does hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within Sea Pines Plantation, owned by the Association, and on,

over and across any property owned by the Association, which is encumbered by or contains all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Sea Pines Plantation and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of the Association, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for maintenance, construction, or otherwise, granted to the Association under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Sea Pines Plantation and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within Sea Pines Plantation and sufficient property beside or over any part of the Drainage System to allow for excavation and any other work reasonably necessary to improve, repair or

maintain the Drainage System, so long as such excavation and other work does not impact any Permanent Structure without the prior written consent of the Association.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of Sea Pines Plantation through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by the Association under the Covenants or any other recorded declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Sea Pines Plantation and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide prior written notification to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of Sea Pines Plantation and through the Sea Pines Plantation Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A. M., to 5:00 o'clock, P. M.,

Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and the Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Association, its successors and assigns, to utilize its property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein, except as otherwise herein provided.

(d) The Town agrees to plan, lay out, and execute or build improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations including the Covenants.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of the Association encumbered by

all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System, or from any part of the Drainage System; provided, however, that the Association may have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit the Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Association, its successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the

work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of the Association, which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any "set back" lines with respect to any property currently owned by the Association.

7. In the event of a termination of the Drainage Agreement entered into between the Association and the Town contemporaneously with this Access, Drainage and Maintenance Easement Agreement, the parties agree to thereafter execute, deliver and cause to be recorded such document as may be necessary to terminate and cancel this Access, Drainage and Maintenance Easement Agreement in the public records.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this _____ day of _____, 2012.

WITNESSES:

Community Services Associates, Inc.,
a South Carolina not for profit corporation

By: _____

Attest: _____

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that _____ personally
appeared before me on this day and duly acknowledged the execution of the foregoing
instrument on behalf of _____.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

The Town of Hilton Head Island,
South Carolina

By: _____
Drew A. Laughlin, Mayor

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____



MEMORANDUM

TO: Town Council

VIA: Stephen G. Riley, CM, Town Manager

FROM: Jeff Buckalew, PE, Town Engineer

COPY: Scott Liggett, PE, Director of Public Projects and Facilities / Chief Engineer
Gregg Alford, Town Attorney

DATE: January 25, 2012

SUBJECT: Proposed Storm Water Agreement with Wexford Plantation

Recommendation:

Staff recommends that the Town enter into an agreement with **Wexford Plantation Homeowners Association, Inc. ("WPHOA")** to undertake the maintenance and improvement of the storm and surface water drainage system within Wexford Plantation and acquire non-exclusive easement rights for access, maintenance, and drainage over the Wexford Plantation drainage system.

Summary:

The **WPHOA** has agreed to grant the Town maintenance rights over their drainage system. The Town will use storm water utility fee revenues to provide maintenance and improvements on this system in accordance with the agreement. The Town's responsibilities shall begin on July 1, 2012. This 500 acre development will be a significant addition to the Town's storm water responsibilities. Given the rate increase

of 2010 and the bond acquisition to occur this year, staff does not recommend a rate increase at this time to fund this additional responsibility. However, given current staffing levels, the level of service may likely be diminished.

Background:

Shortly after the creation of the Storm Water Utility in 2001, the Town offered to accept the maintenance responsibility of the storm water systems located within the planned unit developments. To date, agreements have been executed with Shipyard, Port Royal, Hilton Head Plantation, and Indigo Run, Leamington, and Palmetto Dunes. Wexford approached the Town earlier this year requesting the Town accept maintenance of their drainage system. The agreement defines the roles and responsibilities of each party and the exhibit delineates the physical limits of the Town's responsibilities.

The current annual storm water fee is \$108.70 per single family unit (SFU). Past maintenance of the PUD storm water systems the Town is currently responsible for has cost approximately \$85 per acre per year. Given the number of single family units paying the fee within the Town limits and this estimated rate of expenditure, it would take a fee increase of \$1.29 per SFU to cover this additional area. Staff shall closely monitor the maintenance costs and our service capabilities to determine whether a fee increase or staffing adjustments are warranted for fiscal year 2014.

Attachments:

- Wexford Drainage Agreement
- Wexford Access, Drainage and Maintenance Agreement
- Wexford Drainage Easement Exhibit (area of responsibility)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF THAT CERTAIN DRAINAGE AGREEMENT AND ACCESS, DRAINAGE AND MAINTENANCE EASEMENT WITH WEXFORD PLANTATION HOMEOWNERS ASSOCIATION, INC. ACROSS PROPERTY LOCATED IN WEXFORD PLANTATION.

WHEREAS, Wexford Plantation Homeowners Association, Inc. (“Wexford”) owns improved and unimproved real property and easements within Wexford Plantation; and

WHEREAS, Beaufort County, South Carolina adopted Ordinance 99-101 et seq., as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina and which also provides that fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina (“Town”) are returned to the Town to be used for the purposes set forth in the Ordinance including the construction and maintenance of planned and existing infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town; and

WHEREAS, Wexford desires for the Town to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Wexford Plantation to facilitate the flow of storm water drainage through and from areas within Wexford Plantation; and

WHEREAS, to undertake these improvements, it is necessary for the Town to obtain from Wexford a Drainage Agreement and an Access, Drainage and Maintenance Easement, copies of which are attached hereto as Exhibit “A”; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the citizens and visitors of the Town of Hilton Head Island to undertake the improvements stated above; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Mayor and/or Town Manager are hereby authorized to execute and deliver a Drainage Agreement and an Access, Drainage and Maintenance Easement in a form substantially similar to that attached hereto as Exhibit "A"; and
2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNSEL THIS ___ DAY OF
_____, 2012.**

Drew Laughlin, Mayor

ATTEST:

Cori Brock, Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member:_____

STATE OF SOUTH CAROLINA)
) **DRAINAGE AGREEMENT**
COUNTY OF BEAUFORT)

This Drainage Agreement is made this _____ day of _____, 2011, by and between Wexford Plantation Homeowners Association, Inc. having an address of P.O. Box 4100, Hilton Head Island, SC 29938); and the Town of Hilton Head Island, South Carolina, having an address of One Town Center Court, Hilton Head Island, South Carolina, 29928.

WITNESSETH

WHEREAS, Wexford Plantation is a planned unit development lying and being within the Town of Hilton Head Island, Beaufort County, South Carolina; and,

WHEREAS, Wexford Plantation Homeowners Association, Inc. is the owner of improved and unimproved real property and easements within Wexford Plantation, in the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Beaufort County, South Carolina, has adopted Ordinance 99-101, *et seq.*, as amended, creating a Storm Water Utility with the power to impose Storm Water Service Fees on all residents of Beaufort County, South Carolina, and which also provides that Storm Water Service Fees collected from within the municipal limits of the Town of Hilton Head Island, South Carolina, are returned to the Town of Hilton Head Island, South Carolina, less administrative fees, to be used for the purposes set forth in Ordinance 99-101, *et seq.*; and,

WHEREAS, the imposition and collection of Storm Water Service Fees results in a fund available to the Town of Hilton Head Island, South Carolina, for the construction and maintenance of existing and planned infrastructure which collects and disposes of surface and storm water within the municipal limits of the Town of Hilton Head Island, South Carolina; and,

WHEREAS, Wexford Plantation Homeowners Association, Inc. desires for the Town of Hilton Head Island, South Carolina, to utilize Storm Water Service Fees to undertake the maintenance and improvement of the storm and surface water drainage system within Wexford Plantation, consisting of, without limitation, drainage lagoons, canals, underground pipes, culverts, manholes, weirs, valves, gates and related equipment, including an existing pump station and related infrastructure, to facilitate the flow of storm water drainage through Wexford Plantation and from areas within Wexford Plantation; and,

WHEREAS, Wexford Plantation Homeowners Association, Inc. has agreed to grant access, drainage and maintenance easements to the Town of Hilton Head Island, South Carolina, in order to facilitate the maintenance and improvement of the storm and surface water drainage system within certain areas of Wexford Plantation.

NOW, THEREFORE, know all men by these presents, Wexford Plantation Homeowners Association, Inc. and the Town of Hilton Head Island, South Carolina, for and in consideration of the sum of One and No/100 (\$1.00) Dollar,

each paid to the other at and before the execution and delivery of this Agreement, the receipt and sufficiency whereof is acknowledged, the Parties hereto agree as follows:

1. **Defined Terms:** As used herein, the following terms shall mean:

(a) *Agreement:* This “Drainage System Maintenance Agreement”.

(b) *Association:* Wexford Plantation Homeowners Association, Inc. with the address first above written, a South Carolina not-for-profit corporation.

(c) *Casualty:* The destruction of all or any part of the Drainage System through a natural or other disaster.

(d) *Covenants:* Collectively, The Declaration of Covenants, Conditions, and Restrictions for Wexford Plantation recorded in the Beaufort County Register of Deeds Office on November 16, 1982 in Official Record Book 357 at Page 1179, as amended, and the Declaration of Covenants, Conditions, and Restrictions Harbor Multi-Family Area of Wexford Plantation recorded in the Beaufort County Register of Deeds Office on October 15, 1984 in Official Record Book 405 at Page 652, as amended.

(e) *Drainage System:* The existing system of ditches, drains, lagoons, pipes, culverts, structures, facilities and any related storm

water improvements, including an existing pump station and related infrastructure, lying within the limits of the easement areas as depicted on the map attached hereto as Exhibit "A" which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within Wexford Plantation. For purposes of this Agreement, the Drainage System shall not include the harbor and its associated canals, locks, gates and structures, any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(f) *Drainage System Deficiency:* A Drainage System Deficiency is anything which prevents, impairs or impedes the adequate flow or drainage of storm and surface water through the Drainage System, areas needing improvements to facilitate the adequate flow of storm and surface water through the Drainage System, soil erosion, or any structural inadequacies. Drainage System Deficiencies do not include the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates. Drainage System Deficiencies do not include the

introduction of pollution or pollutants into the Drainage System from any source.

(g) *Emergency*: A blockage, structural or mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Wexford Plantation.

(h) *Wexford Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described on the map attached as Exhibit “B” hereto.

(i) *Storm Water Service Fees*: The fees collected by Beaufort County, South Carolina, under the authority of Beaufort County Ordinance 99-101, *et seq.*, as amended, and which are remitted by Beaufort County, South Carolina, to the Town of Hilton Head Island, South Carolina; or any similar fee, however denominated, imposed and collected by any subsequent or successor Storm Water Utility operated by The Town of Hilton Head Island, South Carolina, under the authority of Ordinance Number 2002-43.

(j) *Storm Water Project Prioritization and Annual Budget Process:* The Town shall at all times maintain a current, prioritized list of all known Drainage System Deficiencies within the Town limits that qualify for service using Storm Water Fees. Prior to each fiscal year, the Town shall establish an annual Storm Water budget which defines all revenues and expenditures associated with the Storm Water Fees. This budget shall include those known projects intended to be completed within that fiscal year.

(k) *Town:* The Town of Hilton Head Island, South Carolina.

(l) *Capital Improvements Program:* A multi-year program developed by the Town as a part of its budget process by which work related to storm and surface water drainage infrastructure within the Town is prioritized, scheduled and funded.

2. **Grant of Easements:** Simultaneous with the execution and delivery of this Agreement, the Association shall grant an “Access, Drainage and Maintenance Easement” to the Town to allow the Town to access, maintain, improve and utilize the Drainage System within Wexford Plantation, with said easement being in the form attached hereto as Exhibit “C”

3. **Upkeep and Maintenance of Drainage System:** Upon the execution and delivery of this Agreement and the Access, Drainage and Maintenance

Easement, the Town shall be responsible for any improvement, repair or maintenance necessary to correct any Drainage System Deficiency under the terms and conditions of this Agreement.

4. **Procedure for Town's Maintenance of Drainage System:** The Parties acknowledge that the Town intends to provide for the maintenance of the Drainage System and the correction of identified Drainage System Deficiencies, other than those caused by an Emergency or Casualty, through the development of its Storm Water Project Prioritization and Annual Budget Process. Other than in the case of an Emergency or Casualty, as described in Articles 7 and 8 below, the Parties agree to the following procedure for the Town's improvement, repair and maintenance of the Drainage System:

(a) *Identifying Drainage System Deficiencies:* The Association shall identify any Drainage System Deficiencies.

(b) *Schedule for Submission:* The Association shall submit its or their written description of all known or perceived Drainage System Deficiencies to the Town Storm Water Administrator, describing the nature, location and cause, if known, of each Drainage System Deficiency, as well as potential solutions and preliminary cost estimates. Drainage System Deficiencies that are reported to the Town, or which are discovered by the Town but not identified by the Association, by the end of any calendar year will be

considered in the development of the Storm Water Project Prioritization and Annual Budget Process for the following fiscal year. The Town shall submit to the Association by the end of any calendar year, a written description of any Drainage System Deficiencies identified by the Town through maintenance activity or inspections during that year.

(c) *Completion of Maintenance:* The Town shall develop a Storm Water Project Prioritization and Annual Budget Process that will address the identified Drainage System Deficiencies as follows:

(i) The Town shall determine the scope and extent of the improvement, repair or maintenance that is necessary to correct any Drainage System Deficiencies, and the means, methods and materials needed to accomplish the same.

(ii) Determine the priority of the correction of the Drainage System Deficiencies and schedule the improvement, repair or maintenance to correct the Drainage System Deficiencies for a specific year within the Storm Water Project Prioritization and Annual Budget Process. The determination of the priority, scheduling and funding of the correction of Drainage System Deficiencies shall be made by the Town, taking into account the following:

(A) The availability and amount of revenue from bonds or Storm Water Service Fees in any given fiscal year;

(B) All other projects, or requested improvements, repair and maintenance that are to be funded with Storm Water Service Fees.

(iii) Complete the work necessary to correct the Drainage System Deficiencies in the fiscal year as determined by the Town as a part of the Storm Water Project Prioritization and Annual Budget Process, unless emergency projects alter the prioritization such that funds are insufficient to correct all drainage system deficiencies as intended within the same fiscal year.

(d) Other than in the case of an Emergency, the Town and the Association shall mutually agree in writing as to the scheduling of any work to be performed hereunder in Wexford Plantation in advance of the commencement of the work.

(e) The Association shall be solely responsible for the notification of its owners and guests regarding any Town maintenance or emergency work that may disrupt normal activities.

(f) The Town cannot guarantee that the amount of available Storm Water Service Fees, the number of projects to be funded with Storm Water Service Fees in any given fiscal year, and events such as weather related emergencies and drainage system failures in other parts of Hilton Head Island will not cause delays in the correction of Drainage System Deficiencies within Wexford Plantation and elsewhere. The parties acknowledge that the Town's determinations with respect to the priority, funding and timing of the correction of any Drainage System Deficiency shall be final.

5. Further Obligations of Wexford Plantation Homeowners Association, Inc.:

The Association agrees that during the term or any renewal term of this Agreement, it shall take no action which obstructs or impedes the flow of storm and surface water through the Drainage System; provided, however, that to the extent the Association has a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties and/or Recreational Areas (as such terms are defined in the Covenants and which Common Properties and/or Recreational Areas may include lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in

any way restrict or limit the Association from taking reasonable actions to perform said obligations.

6. **Payments as Current Expense of Town:** Any payments to be made by the Town hereunder shall be made from Stormwater Service Fees as budgeted for by the Town in any given fiscal year. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

7. **Emergency:** The Parties agree that in the event of an Emergency, the following procedure shall apply:

(a) *Responsibilities of the Association:* The Association shall take such steps as may be necessary to secure any area affected by the Emergency. The Association shall notify the Town as soon as is practical after discovery of the Emergency.

(b) *Town Responsibilities:* Upon receipt of such notification from the Association, the Town shall determine the scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same. The Town shall correct or repair

the damage caused by the Emergency as soon as is practical, taking into account the threat presented by the Emergency, the cause of the Emergency or the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Emergency from Storm Water Service Fees.

8. **Casualty:** The Parties agree that in the event of a Casualty, the following procedure shall apply:

(a) *Agreement Not Terminated:* This Agreement shall remain in full force and effect.

(b) *Design of Drainage System:* The Town shall produce engineering and design plans at its expense for any necessary reconstruction of the Drainage System.

(c) *Approval of Plans:* The engineering and design plans must be approved by the Association, prior to any reconstruction of the Drainage System. In the event such reconstruction requires work outside of the Easement limits as depicted in Exhibit "A," the parties agree to modify the Access, Drainage and Maintenance Easement by a written agreement to be recorded in the Office of Register of Deeds for Beaufort County, South Carolina increasing the Easement areas as reasonably necessary to accommodate such

reconstruction and the Association agrees to grant any temporary license allowing the Town temporary access to those Common Areas of Wexford Plantation reasonably necessary to accommodate such reconstruction.

(d) *Reconstruction of Drainage System:* Following the approval of the engineering and design plans and specifications by the Association and the completion of an Access, Drainage and Maintenance Easement Amendment and any temporary license agreement as set forth above in subsection (c), the Town shall complete the reconstruction of the Drainage System as soon as is practical, taking into account the threat presented by the cause of the Casualty, the existence of any general emergency affecting the Town and availability of funding. The Town may seek reimbursement for any costs incurred by the Town as a result of any Casualty from Storm Water Service Fees, bond, or other government aid and assistance programs.

9. Maintenance of Drainage System by Wexford Plantation Homeowners Association, Inc.: Nothing herein shall prohibit the Association from performing any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency in advance of the time that any such work is scheduled as a part of the Town's Storm Water Project

Prioritization and Annual Budget Process, in the event that the Association, determines that it is in its interest to do so. Other than in the case of an Emergency (which is addressed in Article 10, below), the Association shall be entitled to reimbursement for any such work from Stormwater Service Fees, in the fiscal year that such work is scheduled to be done as a part of Town's Storm Water Project Prioritization and Annual Budget Process, for the cost of any such work upon compliance with the following;

(a) The Association shall submit its plans, quantities, and specifications for any improvement, repair or maintenance necessary to correct or repair any Drainage System Deficiency.

(b) Unless the Town determines that:

(i) The proposed improvement, repair or maintenance does not correct an existing Drainage System Deficiency; or,

(ii) The scope of the proposed improvement, repair or maintenance exceeds what is necessary to correct an existing Drainage System Deficiency, the Town, through authorized staff, shall grant its written approval.

(c) The Association shall bid the work in accordance with the Town's Procurement Code, § 11-1-111, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), as the same may be

amended from time to time, only upon receipt of the Town's written approval.

(d) Any changes in the agreed scope of work resulting in additional work or cost to the Town must be approved in writing by the Town prior to commencement of any additional work..

(e) The Association shall notify the Town within forty-eight (48) hours of the commencement of work and at any key junctures of the work whereas the Town may need to inspect the work.

(f) Upon completion of the work as approved by the Town, The Association shall submit its request for payment to the Town, which shall detail the work done and the payments made, and be accompanied by any required test reports, construction data / measurements or as-built surveys, and its written certification that the work was completed in accordance with the approved plans and specifications.

(g) The Town shall thereafter budget funds for the payment of the reimbursement to The Association from Storm Water Service Fees in the fiscal year that the work is scheduled for completion in the Town's multi-year Capital Improvements Program.

10. **Emergency Work by the Association:** In the event that the Town is unable to repair or correct the damage caused by an Emergency in a time frame that is acceptable to the Association, the following shall apply:

(a) The Association shall consult with the Town to determine a cost efficient scope and extent of the work that is necessary to repair or correct the damage caused by the Emergency, and the means, methods and materials needed to accomplish the same.

(b) The Association shall complete the work that is necessary to repair or correct the damage caused by the Emergency.

(c) Upon completion of the work, The Association shall submit its or their request for payment to the Town, which shall detail the work performed and the cost for the same, and be accompanied by any required test reports, construction data / measurements or as-built surveys, with a written certification that the work was necessary to repair or correct the damage caused by an Emergency.

(d) Within three (3) fiscal years following the completion of the work by the Association necessary to repair or correct the damage caused by the Emergency, the Town shall budget funds for the payment of the reimbursement to the Association and shall pay the same in accordance with the approved budget.

11. **No Guarantees Regarding Flooding:** The Association acknowledges that the Town's performance of its obligations under this Agreement does not guarantee or insure that property within Wexford Plantation will be free of events of flooding or erosion, and that the Town does not represent or warrant to the Association that the performance of the Town's obligations under this Agreement will operate to prevent events of flooding or erosion within Wexford Plantation.

12. **Waiver of Stormwater Service Fee Credit:** Upon the execution and delivery of this Agreement, and for and during the term or any extensions hereof, the Association acknowledges it shall not be entitled to receive and hereby waives any Stormwater Service Fee Credit from Beaufort County or the Town with respect to any real property located within the limits of the PUD, as indicated on the map attached hereto as Exhibit "B", for and during the term of this Agreement or any renewal of this Agreement.

13. **Term:** This Agreement shall remain in place for a period of Five (5) year(s), and shall renew automatically for successive one (1) year terms thereafter, unless either Party notifies the other, in writing, of its intention to terminate this Agreement. Any such notice shall be delivered more than one hundred and twenty (120) days prior to the end of the Town fiscal year (June 30) at the end of the then-current term in which such Party wishes to terminate. Upon delivery of such notice, this Agreement shall terminate on July 1 of the

calendar year in which the notice is delivered. The parties shall thereafter execute and deliver such documents as may be necessary to cancel the Access, Drainage and Maintenance and Construction Easements delivered pursuant to this Agreement.

14. Representation and Warranties of Wexford Plantation Homeowners Association, Incorporated:

The Association represents and warrants:

(a) That any and all necessary approvals and/or resolutions have been obtained, that it has the full authority to execute, deliver and perform this Agreement and to execute and deliver the Access, Drainage and Maintenance and Construction Easements to be delivered pursuant to this Agreement, and that the individual(s) executing such documents have full power and authority to bind the Association to the same.

(b) That it is not now a party to any litigation affecting the property burdened by the easements herein which could impair the obligations of the Association under this Agreement or the easements, and the Association knows of no litigation or threatened litigation affecting their ability to grant the easements.

(c) That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or

in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full authority under Section 3.07 of the Covenants to convey and/or assign the rights contemplated in this Agreement and the Access, Drainage and Maintenance Easement.

15. **Town Representation and Warranties:** The Town represents and warrants to the Association:

(a) As is shown by the Resolution of the Town that is attached hereto as Exhibit “D”, the Town represents that it has the power and authority to enter into this Agreement and complete its obligations hereunder; and,

(b) That it is not now a party to any litigation which could impair the obligations of the Town under this Agreement, and the Town knows of no litigation or threatened litigation affecting its ability to perform hereunder.

16. **Taxes:** The Association shall pay, prior to delinquency, all taxes on Association properties within Wexford Plantation burdened by the easements granted under this Agreement. Should the Association fail to pay said taxes prior to delinquency, then the Town may pay said taxes and the Association shall reimburse the Town for such tax payment within

fifteen (15) days of the Town's notification to the Association of its tax payment along with a copy of the Town's tax payment receipt.

17. **Default:** The Town and the Association agree that in the event of a default or breach of any provision or term of this Agreement, the non-defaulting party or parties shall give written notice to the defaulting party or parties of the default or breach. In the event that the defaulting party or parties fail to cure the default or breach within thirty (30) days of the date of the written notice specifying the default or breach, then the non-defaulting party or parties shall be entitled to pursue any remedy at law or in equity against the defaulting party or parties, including but not limited to an action for damages, injunction or specific performance of this Agreement.

18. **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default or misrepresentation in connection with any of the provisions or terms of this Agreement, the prevailing party or parties shall be entitled to recover its or their reasonable attorney's fees and any costs incurred as a result of any such action or proceeding, whether incurred before the commencement of suit or after the commencement of suit, and including appellate proceedings, in addition to any other relief to which the prevailing party or parties is or are entitled.

19. **General Provisions:**

(a) *Binding Effect:* This Agreement shall inure to the benefit of and be binding upon the Association and the Town, and their respective successors and assigns.

(b) *Amendment, Changes and Modifications:* Except as is otherwise provided herein, this Agreement may not be effectively modified, amended, changed or altered without the written consent of the Town and the Association.

(c) *Severability:* In the event that any term or provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

(d) *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

(e) *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(f) *Captions:* The captions or headings used herein are for convenience only and in no way define, limit, expand or describe the scope or intent of any term or provision of this Agreement.

(g) *Plural/Singular:* Where appropriate, the use of the singular herein shall be deemed to include the plural, and the use of the plural herein shall be deemed to include the use of the singular.

(h) *No Third Party Beneficiaries:* The Town and the Association affirmatively represent that this Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. It is the express intent of the Town and the Association that no other party shall have any enforceable rights hereunder, or any right to the enforcement hereof, or to any claim for damages as a result of any alleged breach hereof.

(i) *Notices:* All notices, applications, requests, certificates or other communications required hereunder shall be sufficiently given and shall be deemed given on the date when such is delivered in person, or deposited in the United States Mail, by regular first class mail, postage prepaid, at the following addresses, or at such other address as may be designated, in writing, by the Parties:

To the Town: The Town of Hilton Head Island,
South Carolina
Stephen G. Riley, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

To: Wexford Plantation Homeowners
Association, Inc.
Attn: General Manager
P.O. Box 4100
Hilton Head Island, SC 29938

With Copy to: Wexford Plantation Homeowners
Association, Inc.
Attn: Board President
P.O. Box 4100
Hilton Head Island, SC 29938

(j) *No Waiver:* No failure of any Party hereto to exercise any power or right given to such Party hereunder, or to insist on strict compliance by any other Party of its obligations hereunder, and no custom or practice of the Parties at variance with the terms and provisions hereof shall constitute a waiver of any Party's right to thereafter demand strict compliance with the terms of this Agreement.

(k) *Further Assurances and Corrective Documents:* The Town and the Association agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably

determined to be necessary to carry out this Agreement and give effect to the terms and provisions hereof. The Town and the Association agree that each shall, upon request, execute and deliver such other or further or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the terms and provisions hereof.

20. **Pump Station:** The Town and the Association entered into that certain Agreement dated October 1, 2002 regarding the dredging of and drainage of storm water through the main drainage canal located in Wexford as well as the construction, use and maintenance of a pump station and related infrastructure at the Broad Creek outfall of such canal (the "2002 Agreement"). As set forth in Article 1(e) above, the pump station and related infrastructure constitute part of the Drainage System, and this Agreement shall supersede all aspects of the 2002 Agreement and any amendments thereto, and the same shall be deemed terminated, null and void upon the date of the complete execution and acceptance of this Agreement. The Town shall not be responsible for maintenance of any landscaping at the pump station site.

IN WITNESS WHEREOF, The Town of Hilton Head Island, South Carolina; and Wexford Plantation Homeowners Association, Inc. by and through

their duly authorized officers, have executed and delivered this Agreement as of this ____ day of _____, 2011.

SIGNATURES BEGIN ON NEXT PAGE

WITNESSES:

WEXFORD PLANTATION
HOMEOWNERS ASSOCIATION, INC.

By: _____

Its: _____

Attest: _____

Its: _____

THE TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

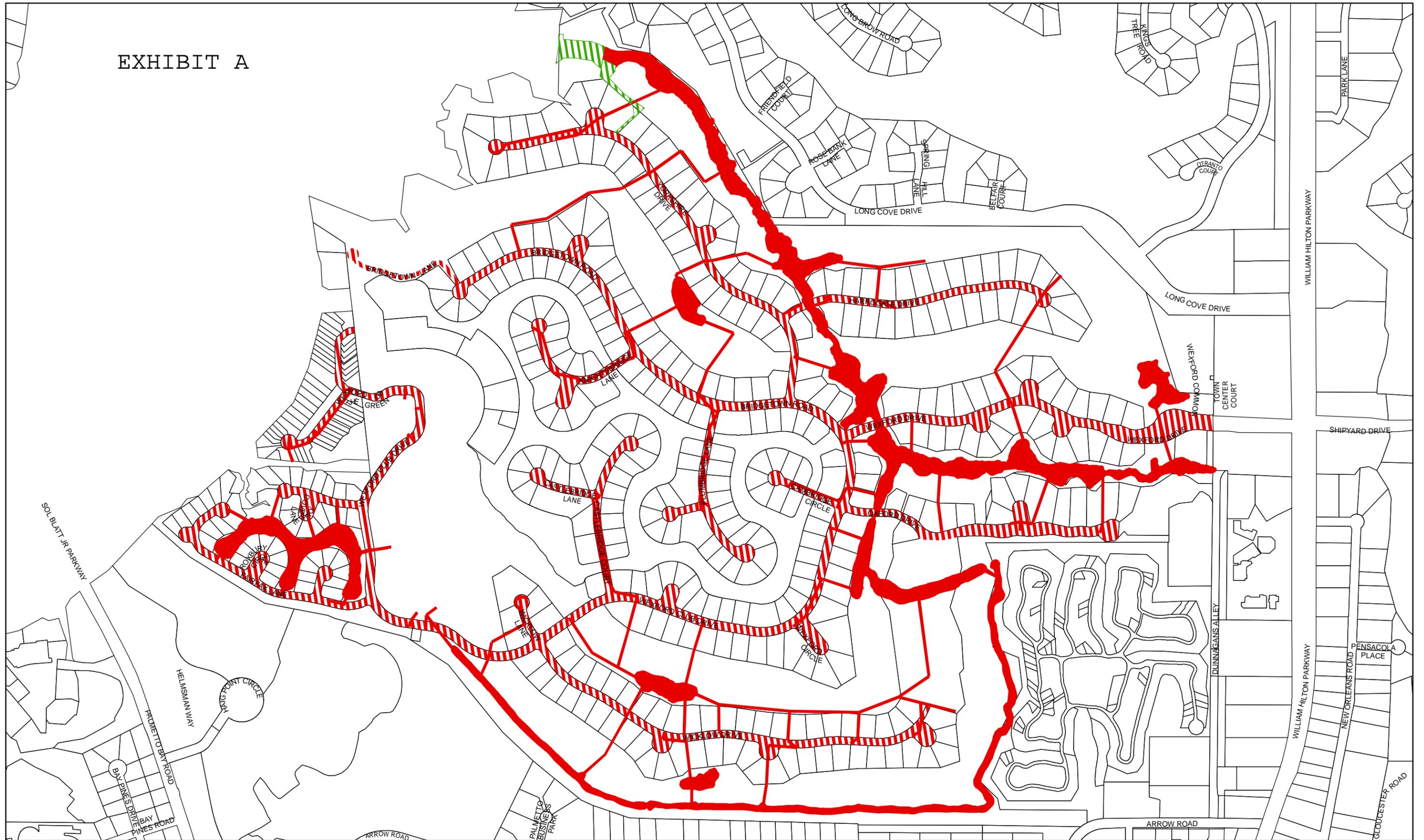
By: _____

Drew A. Laughlin, Mayor

Attest: _____

Stephen G. Riley, Manager

EXHIBIT A



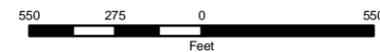
Easement **Parcels**

- Lagoons & Pipes
- Road Right of Way
- Access & Pump Station

Note: Drainage easement widths are 20 feet around the center of pipes depicted on the exhibit and 15 feet from the top of bank of lagoons depicted on the exhibit. The Access and Pump Station easement boundaries are referenced from Beaufort County plat book 86, page 184.

Wexford Plantation

Access, Drainage and Maintenance Exhibit



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

pipes, culverts, structures, facilities and any related storm water improvements, including an existing pump station and related infrastructure, lying within the limits of the Drainage Easement Areas as shown on the attached Exhibit "A" which facilitate the collection, storage and conveyance of storm and surface water runoff through and from within Wexford Plantation. For purposes of this Agreement, the Drainage System shall not include the harbor and its associated canals, locks, gates and structures, any bridges, docks, retaining walls, road or pathway asphalt, or structural bulkheads.

(d) *Emergency*: A blockage, mechanical failure, collapse or other sudden catastrophic event affecting any part of the Drainage System which prevents the flow of storm and surface water through all or any part of the Drainage System, or which otherwise results in an imminent peril to life or property within Wexford Plantation.

(e) *Setback*: An area measured inward from the property line, right-of-way line or a specified line defining the limits within which no structure not otherwise authorized shall be located, per Sec 16-10-201 Town of Hilton Head Island Land Management Ordinance, rev 01/15/08 Ordinance 2008-1 as may be amended.

(f) *Wexford Plantation*: A planned unit development lying and being on Hilton Head Island, Beaufort County, South Carolina, which is shown and described within the area detailed on the map attached as Exhibit "B"

hereto.

(g) *Permanent Structure:* Any structure, including, but not limited to, the following: buildings (including sheds), walls, and other masonry structures, tennis courts, and swimming pools.

(h) *Town:* The Town of Hilton Head Island, South Carolina.

2. *Grant of Easements:* The Association, do hereby grant, transfer, sell and convey to the Town, and its agents, assigns, employees and contractors, and their vehicles, machinery and equipment, and create and establish for the benefit of the Town, the following easements:

(a) A non-exclusive Access Easement on, over and across any roads and streets within Wexford Plantation, and on, over and across any property owned by The Association, encumbered by all or any part of the Drainage System. This Access Easement includes a non-exclusive and partial assignment of any and all easement rights for access held by the Association, under the Covenants or any other declaration of covenants and restrictions, recorded easements or otherwise, over property that the Association does not own within Wexford Plantation and upon which any part of the Drainage System lies or passes on, across, under or through.

(b) A non-exclusive Maintenance Easement on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System. This Maintenance Easement includes a non-exclusive and partial assignment of any and all easement rights for

maintenance, construction, or otherwise, held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that The Association does not own within Wexford Plantation and upon which any part of the Drainage System lies or passes on, across, under or through. This Maintenance Easement shall include all facilities or structures directly related to the collection, storage and conveyance of storm and surface water now or hereafter existing within Wexford Plantation, and sufficient property beside or over any part of the Drainage System as shown on Exhibit "A" to allow for excavation and any other work necessary to improve, repair or maintain the Drainage System.

(c) A non-exclusive Drainage Easement for the conveyance of any storm and surface water originating from within or without the boundaries of Wexford Plantation through the Drainage System, at such rates and in such amounts as may occur from time to time.

(d) This Drainage Easement includes a non-exclusive and partial assignment of any and all easement rights for drainage held by The Association, under the Covenants or any other recorded declaration of covenants and restrictions or recorded easements over property that the Association does not own within Wexford Plantation and upon which any part of the Drainage System lies or passes on, across, under or through; provided however, that the Town shall provide timely written notification

to the Association of any potentially disruptive improvements and/or modifications to the systems conveying storm and surface water originating without the boundaries of Wexford Plantation and through the Wexford Plantation Drainage System.

3. This Access, Drainage and Maintenance Easement is granted and accepted subject to the following:

(a) The Town agrees that the use of the easements granted herein shall be restricted to the hours of 7:00 o'clock, A. M., to 5:00 o'clock, P. M., Monday through Friday excluding public holidays, except in the event of an Emergency.

(b) Other than in the case of an Emergency, the Town and The Association shall determine the scheduling of any work to be performed hereunder, on its or their property, in advance of the commencement of the work.

(c) This Access, Drainage and Maintenance Easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by The Association, or any of them, their successors and assigns, to utilize their property at any time, in any manner, and for any purpose, provided, however, that such use by the Association shall not be inconsistent with nor prevent the full utilization by the Town of the rights and privileges granted herein.

(d) The Town agrees to plan, lay out, and execute or build

improvements, repairs and maintenance of the Drainage System, and further agrees that the Town's exercise of the rights granted in this Access, Drainage and Maintenance Easement shall be under the exclusive control of the Town and that the Town shall at all times comply with all applicable laws, rules, codes, and regulations.

(e) The Association shall not erect any Permanent Structure on, under, over, through and across any property of The Association, encumbered by all or any part of the Drainage System without the Town's prior written approval, which approval shall not be unreasonably withheld. The Association shall not impede, obstruct, or allow to be obstructed, the natural flow of storm and surface water runoff through the Drainage System, or from any part of the Drainage Areas through the Drainage System; provided, however, that the Association have a continuing obligation under the Covenants to repair and maintain various improvements located within the Common Properties (lagoons and lagoon banks, roads, pathways, utilities, etc.), and this Agreement is not intended to in any way restrict or limit Association from taking reasonable actions to perform said obligations.

(f) The rights conveyed under this Access, Drainage and Maintenance Easement are limited to the parties and purposes stated herein. This Access, Drainage and Maintenance Easement conveys no rights of access or otherwise to the general public.

4. The Association acknowledges that the Town shall have no obligation to perform or pay for any work to repair, improve or maintain the appearance or appeal of the lagoons, banks of lagoons, landscaping, drains, canals, or other visible components of the Drainage System, including, but not limited to, structures, bridges, bulkheads, pipes, culverts, valves and gates.

5. The Town agrees to cause all work contemplated hereunder to be performed in a workmanlike fashion with minimal interference to the Grantors, their successors, assigns, invitees, guests, licensees, and agents. The Town further agrees to cause the work contemplated hereunder to be completed in an expeditious and timely fashion, and that all materials, debris, and construction materials shall be promptly removed. The Town shall restore any other part of the property of The Association which may be damaged as a result of the Town's exercise of the rights granted hereunder to its pre-existing state.

6. The Town hereby warrants to the Association that the granting of this Access, Drainage and Maintenance Easement will not affect any Setback lines with respect to any property currently owned by The Association.

7. That as to any pipes or other portions of the Drainage System as shown on Exhibit A hereto which are located in whole or in part on private residential lots (ie. not within golf course, common area or open space parcels), the Association has full authority under Section 3.07 of the Covenants to convey and/or assign the rights contemplated herein.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Town of Hilton Head Island, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access, Drainage and Maintenance Easement to be executed by their duly authorized officers as of this _____ day of _____, 2011.

WITNESSES:

WEXFORD PLANTATION HOMEOWNERS
ASSOCIATION, INC.

By: _____

Robert J. Grassi

Its: President

Attest: Susan Fishel

Its: General Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Robert J. Grassi and Susan Fishel personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Wexford Plantation Homeowners Association, Inc.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

S.C. CODE § 30-5-30 (SUPP. 2010)

I, the undersigned Notary Public do hereby certify that Drew A. Laughlin and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me
on this _____ Day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____

MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, C.M., Town Manager

RE: Resolution Expressing the Town's Support for the Municipal Association of South Carolina's 2012 Legislative Agenda

DATE: February 7, 2012

Recommendation: Staff recommends approval of the attached Resolution.

Summary: The attached, proposed Resolution formally expresses the Town's general support for the Municipal Association of South Carolina's (MASC) 2012 Legislative Agenda.

Background: In December 2011, the MASC Board of Directors approved its 2012 Legislative Agenda that supports local elected leaders making decisions based on local needs and priorities. MASC has requested cities and towns across the State adopt a formal resolution to show support for its 2012 Legislative Agenda.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, EXPRESSING ITS SUPPORT FOR THE MUNICIPAL ASSOCIATION OF SOUTH CAROLINA'S 2012 LEGISLATIVE AGENDA.

WHEREAS, cities and towns in South Carolina are the government closest to the people providing the core services residents and businesses demand for a high quality of life; and

WHEREAS, residents and businesses want their local city and town councils to have the flexibility to make decisions that are best for their communities while also being held accountable by their residents to spend wisely and govern locally; and

WHEREAS, cities and towns support increasing the economic strength of the state to enable job creation for residents and encourage business development and success; and

WHEREAS, the Municipal Association Board of Directors approved the 2012 legislative agenda that supports local elected leaders making decisions based on local needs and priorities; and

WHEREAS, the legislative agenda is based around three legislative principles of promoting economic growth, enhancing a positive quality of life, and encouraging local accountability and fiscal responsibility that support the core functions of government that cities and towns provide; and

WHEREAS, enclave annexation, municipal capital project sales tax, fully funding the Local Government Fund and rehabilitating abandoned buildings are the four major legislative issues that local elected leaders determined can have the greatest impact on their hometowns; and

WHEREAS, the agenda also focuses on fiscal, economic development, infrastructure and public safety issues that are important to cities and towns of all sizes and in all parts of the state; and

WHEREAS, the Town of Hilton Head Island, South Carolina Town Council generally supports the agenda set forth by the Municipal Association of South Carolina Board of Directors for cities and towns to govern locally for residents.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THAT the Council affirms its support for the Municipal Association of South Carolina's 2012 legislative agenda to direct more local decision making to the local elected officials that govern the state's 269 cities and towns.

MOVED, APPROVED, AND ADOPTED THIS _____ DAY OF _____, 2012.

Drew A. Laughlin, Mayor

ATTEST:

By: _____

Cori Brock, Town Clerk

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____